



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

April 19, 2016

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Andrew Bowman, Esq.  
1804 Post Road East  
Westport, Connecticut 06880-5683

Gary Leeds, M.D.  
Otisville FCI  
2 Mile Drive  
Otisville, New York 10963

Lee Davis, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2438  
Albany, New York 12237

**RE: In the Matter of Gary Leeds, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 16-131) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified mail or in person to:**

Office of Professional Medical Conduct  
New York State Department of Health  
Riverview Center  
150 Broadway – Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A large black rectangular redaction box covering the signature of James F. Horan.

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:nm  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Gary Leeds, M.D. (Respondent)

A proceeding to review a Determination by a Committee  
(Committee) from the Board for Professional Medical  
Conduct (BPMC)

**COPY**

Administrative Review Board (ARB)

Determination and Order No. 16-131

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Lee Davis, Esq.  
For the Respondent: Andrew Bowman, Esq.

Following the Respondent's Federal criminal conviction for accepting bribes, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for five years, with three years stayed and to place the Respondent on probation for five years following the suspension, with terms that include continuing medical education (CME) and practice with a monitor. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2016), the Petitioner asked the ARB to modify that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination in full.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq*, BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The BPMC Committee in this case conducted a hearing under the expedited hearing procedures (Direct Referral Hearing) in PHL

§230(10)(p). The Direct Referral Hearing began with an August 31, 2015 Order by the Commissioner of Health of the State of New York suspending the Respondent's License summarily following the Respondent's conviction for a felony, pursuant to § PHL 230(12)(b). The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in N. Y. Education Law (EL) §6530(9)(a)(ii) (McKinney 2016) by engaging in conduct that resulted in a conviction under Federal Law. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that the Respondent entered a guilty plea in the United States District Court for District of New Jersey to accepting bribes in violation of 18 U.S.C. § 1952(a)(3) and 18 U.S.C. § 2. The Court sentenced the Respondent to 20 months incarceration, one year of supervised release, forfeiture of \$108,000.00, a \$15,000.00 fine and a \$100.00 special assessment. The criminal case involved the Respondent's participation in a scheme to refer patients' blood specimens to Biodiagnostic Laboratory Services, LLC, a clinical laboratory, in exchange for large sums of money.

The Committee determined that the Respondent's criminal conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(a)(ii). The Committee found that the Respondent placed his financial interests above the sound care of his patients, by participating in an arrangement to accept money for referring the patients' blood samples. In considering sanctions, the Committee noted the Respondent's compliance with paying the fine and the forfeiture amounts, his long standing commitment to rendering treatment to lower

income families in Manhattan and his expressed remorse for his misconduct. The Committee voted to suspend the Respondent's License for five years, to stay the last three years and to place the Respondent on probation for five years following the actual suspension. The probation terms appear at Appendix II to the Committee's Determination. The probation requires the Respondent to complete CME coursework in billing practices and to practice with a monitor.

### Review History and Issues

The Committee rendered their Determination on December 8, 2015. This proceeding commenced on January 21, 2016, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the parties' briefs. The record closed when the ARB received the briefs on January 20 and 21, 2016.

The Petitioner requested that the ARB overturn the Committee and revoke the Respondent's License because the Respondent abused his License for personal greed. In the alternative, the Petitioner requested that the penalty the Committee imposed should begin only after the Respondent's release from prison. The Petitioner argued that the Respondent's conviction is not necessarily a reflection of his competency as a physician, but the criminal conduct does reflect negatively on the Respondent's integrity as a physician. The Petitioner argued further that there no mitigation due to the Respondent paying the fine and forfeiture amount, because the criminal sentence required the payments.

The Respondent replied that the Committee imposed an appropriate, proportionate and fair penalty. The Respondent argued that he has practiced for 32 years without prior discipline and that there was no evidence that misconduct compromised patient care in any way. The

Respondent argued further that the criminal sentence and disciplinary sanction provide severe penalties which include incarceration and actual suspension from practice.

### ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL § 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health. 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin. 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono. 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence

from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

#### Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the conduct that resulted in the Respondent's criminal conviction constituted professional misconduct. Neither party challenged the Committee's Determination on the charges. We reject the Petitioner's request that we overturn the Committee and revoke the Respondent's License. We affirm the Committee's Determination to suspend the Respondent's License for five years, with three years suspended. The Respondent's actual suspension will commence upon the Respondent's release from incarceration. We also affirm the Committee's Determination to place the Respondent on probation for five years under the terms that the Committee imposed.

The ARB concludes that the Committee imposed the appropriate sanction in this case. There was no evidence before the Committee that the Respondent's conduct compromised patient care. The criminal sentence against the Respondent required him to forfeit the illegal payments he received, in addition to serving a period of incarceration. The Respondent must also

serve an actual suspension from practice, complete CME and practice with a monitor under probation for a substantial period.

**ORDER**

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License for five years, with the last three years stayed, to place the Respondent on probation for five years following the actual suspension and to require the Respondent to complete CME and to practice with a monitor.
3. The Respondent's actual suspension shall commence on the Respondent's release from incarceration.

Peter S. Koenig, Sr.  
Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.



In the Matter of Gary Leeds, M.D.

Linda Prescott Wilson, an ARB Member, concurs in the Determination and Order in the  
Matter of Dr. Leeds.

Dated: 7 April, 2016



Linda Prescott Wilson

In the Matter of Gary Leeds, M.D.

Peter S. Koenig, Sr., an ARB Member, concurs in the Determination and Order in the Matter of Dr. Leeds.

Dated: April 5, 2016

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Peter S. Koenig, Sr.

In the Matter of Gary Leeds, M.D.

Steven Grabiec, M.D., an ARB Member, concurs in the Determination and Order in the  
Matter of Dr. Leeds.

Dated: 4/5/ 2016

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Steven Grabiec, M.D.

In the Matter of Gary Leeds, M.D.

Richard D. Milone, M.D., an ARB Member, concurs in the Determination and Order in  
the Matter of Dr. Leeds.

Date: April 7, 2016

  
Richard D. Milone, M.D.

In the Matter of Gary Leeds, M.D.

John A. D'Anna, M.D., an ARB Member, concurs in the Determination and Order in the  
Matter of Dr. Leeds.

Dated: April 15, 2016

A black rectangular box redacting the signature of John A. D'Anna, M.D.

John A. D'Anna, M.D.